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No. 2838

United States

Circuit Court of Appeals

For the Ninth Circuit.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of State of Washington,

Plaintiff in Error,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are vise, cancelled matter appearing in ated and cancelled herein accord- from the text is indicated by etween which the omission seems

Index.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,

Plaintiff,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,

Defendants.

Names and Addresses of Counsel.

Messrs. de JOURNELL & de JOURNELL, Attorneys for Plaintiff in Error, Burlingame, California.

ROY V. NYE, Esq., Attorney for Plaintiff in Error, Monrovia, California.

E. C. HUGHES, Esq., Attorney for Plaintiff in Error, 661 Colman Bldg., Seattle, Washington.

MAURICE McMICKEN, Esq., Attorney for Plaintiff in Error, 661 Colman Bldg., Seattle, Washington.

WM. T. DOVELL, Esq., Attorney for Plaintiff in Error, 661 Colman Bldg., Seattle, Washington.

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H. R. CLISE, Esq., Attorney for Defendant in Error, 405 New York Bldg., Seattle, Washington. [1*]

C. K. POE, Esq., Attorney for Defendant in Error, 405 New York Bldg., Seattle, Washington.

WILLIAM A. PETERS, Esq., Attorney for Defendant in Error, 546 New York Block, Seattle, Washington.

JOHN H. POWELL, Esq., Attorney for Defendant in Error, 546 New York Block, Seattle, Washington. [2]

In the District Court of the United States for the Western District of Washington, Northern Division.

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F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
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vs.

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*Page-number appearing at foot of page of original certified Record.

His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,

Defendants.

Complaint.

Plaintiff complains of the defendants and for cause of action alleges:

I.

That on or about the 24th day of February, 1905, the Washington-Alaska Bank, a corporation, was duly organized under and by virtue of the laws of the State of Washington for the purpose of carrying on a general banking business in the Territory of Alaska, and ever since said date has been and now is a corporation duly organized and existing under and by virtue of the said laws. (Said corporation is hereinafter called the "Washington Company" in order to distinguish it from the corporation hereinafter denominated the "Nevada Company.") [3]

II.

That ever since the year 1905 the First National Bank of Fairbanks has been and now is a corporation duly organized and existing under and by virtue of the national banking laws of the United States, and ever since the time of its organization has conducted a general commercial banking business at the Town of Fairbanks, Territory of Alaska.

III.

That from on or about the month of October, 1905, until on or about the month of March, 1908, one E. T.

Barnette, one James W. Hill and one R. C. Wood, as copartners under the firm name and style of The Fairbanks Banking Company, conducted a general banking business in the Town of Fairbanks, Territory of Alaska.

IV.

That on or about the 21st day of January, 1908, The Fairbanks Banking Company was duly organized as a corporation under and by virtue of the laws of the State of Nevada, for the purpose of acquiring, taking over and conducting the business of said copartnership, and ever since said 21st day of January, 1908, said The Fairbanks Banking Company has been a corporation duly organized and existing under and by virtue of the laws of the State of Nevada; that on or about the 8th day of October, 1910, by an amendment to its articles of incorporation, the name of said corporation was changed to Washington-Alaska Bank. (Said corporation is hereinafter called the "Nevada Company" to distinguish it from the corporation herein mentioned as the "Washington Company.") [4]

V.

That said Nevada Company did, on or about the month of March, 1908, in accordance with the purpose for which it was organized, acquire and take over the business of the copartnership known as The Fairbanks Banking Company, and thereafter conducted the same.

VI.

That the said Washington Company, the said Nevada Company and the said First National

Bank of Fairbanks were organized for the purpose of carrying on and conducting a general banking business in the Town of Fairbanks, Territory of Alaska, and the large mining district surrounding said town, and from the date when each of said corporations was organized until as hereinafter set forth the said Washington Company, the said Nevada Company and the said First National Bank, respectively, did carry on a general banking business in the said Town of Fairbanks and the district surrounding it, and not elsewhere. Part of their said banking business consisted of the purchase and sale of native gold, as hereinafter more particularly set forth.

VII.

That ever since the organization and incorporation of said Washington Company, the defendants John Schram, J. W. Clise, Washington Securities Company, F. E. Barbour, Falcon Joslin and W. H. Parsons have been stockholders of the said Washington Company; that ever since the 15th day of September, 1906, the defendant E. L. Webster has been a stockholder of said Washington Company; that ever since the organization and incorporation of said Washington Company the defendants John Schram, J. W. Clise, Falcon Joslin [5] and W. H. Parsons have been directors of said company; that the defendant F. E. Barbour was at all times from the date of the incorporation and organization of said Washington Company until the 3d day of February, 1909, a director of said Washington Company; and that the defendant, E. L. Webster, at all times since said

3d day of February, 1909, has been a director of said Washington Company.

VIII.

That from the time said three banking corporations, respectively, commenced business in the said Town of Fairbanks until the cessation of business by the said Washington Company and said Nevada Company, as hereinafter set forth, the said three banks were the only banks or bankers carrying on business in the said Town of Fairbanks and the surrounding country; that during all of said times there was no other bank or banker within three hundred and fifty miles of said Town of Fairbanks or within six days' travel thereof by regular route from said town; that during all of said times the said three banks had and did among them all the banking business of said town and the region of country surrounding the same extending for hundreds of miles about said town, and did and performed all of the banking business in a large part of the settled portion of the Territory of Alaska known as the Tanana Valley and of the mining country surrounding said valley.

IX.

That the main industry supporting the said Town of Fairbanks, the said Tanana Valley and the country surrounding the said valley, is placer mining, and from said placer mines the owners or operators thereof extracted each year, during all the times herein mentioned, many millions of dollars worth [6] of native and raw placer gold; that the manner in which the said owners and operators carried on

and conducted their business and the necessities of their said business compelled them to sell said gold, so extracted, immediately after its extraction in order to procure the necessary money to carry on and conduct further their mining operations; that by reason of the distance between said mining district of Fairbanks and the other markets for raw gold, to wit, the banks and United States assay office in Seattle, Washington, and the banks and mint in San Francisco, California, the said three banks were then and there the only persons, firms or corporations in said Town of Fairbanks, or in the Tanana Valley, or the country surrounding said valley, provided with sufficient funds and facilities for procuring funds to purchase said gold; that the said miners and operators were thus compelled to and did sell said gold to, or did obtain an advance of cash or credit thereon from one or another of said three banks; that the largest part of the business of each of said three banks consisted, during all the times that they were engaged in the banking business aforesaid, in purchasing said raw gold from the miners, producers, or owners thereof, for a certain percentage of the assay value thereof, and in transporting said gold to the United States assay office at Seattle, Washington, or to the United States mint at San Francisco, California, or by advancing cash or extending credit to said miners, producers and owners thereof, on the security of said gold delivered to them, and in consideration of interest on the money so advanced, or on the credit so extended, or by transporting said gold to the United States assay

office at Seattle, Washington, or to the United States mint at San Francisco, California, in consideration [7] of a percentage charged on the assay value thereof; that a large part of the remaining business of each of the said three banks during all the times herein mentioned was the lending of money upon interest to persons, firms or corporations in said Territory of Alaska and the selling of exchange at said Town of Fairbanks upon banks in other cities and towns in Alaska, and in the cities of the several states of the Union—more particularly Seattle, Washington, and San Francisco, California—and in the cities of various foreign countries, to wit, England, Norway, Sweden, France, Germany and Italy, and also the transferring of money or credit by telegraph from said Town of Fairbanks to other cities or towns in Alaska, the several states of the Union and the foreign countries hereinbefore named, and in particular to the cities of Seattle, Washington, and San Francisco, California.

X.

That on or about the year 1905, at the said Town of Fairbanks, in the said Territory of Alaska, the directors of said the Washington Company, the said First National Bank of Fairbanks, and the copartnership known as The Fairbanks Banking Company (which thereafter became the Nevada Company, as hereinbefore set forth), by and through their respective boards of directors, officers and managers, secretly, unlawfully and in violation of Section 3 of the Act of Congress of July 2, 1890 (commonly known and called the "Sherman Anti-Trust Act"),

agreed, combined and conspired together to restrain trade and commerce in the Territory of Alaska and between said Territory and the several states of the Union and between said Territory and foreign nations, in this, to wit: The board of directors, managers and officers of the said three banks [8] then and there secretly agreed together and with one another to conduct their said three several banking businesses noncompetitively, and, in order to effect and secure such noncompetitive conduct thereof, the board of directors of each of said three banks, by its managing officer, then and there entered into an agreement in the words and figures following, to wit:

"Fairbanks, Alaska, June 6, 1905.

The undersigned Banks hereby agree as follows:

First: The charges for exchange upon drafts shall be one per cent.

Second: The charges for telegraphic transfers outside, shall be three per cent on sums up to five hundred dollars, and two per cent on sums of five hundred dollars and upwards, plus cost of telegram, provided, that the charge for any sum less than five hundred dollars shall not exceed ten dollars plus the cost of telegram: And, provided, further, that on telegraphic transfers by one customer in one year of one hundred thousand dollars or over, there may be allowed and credited to said customer a rebate of one-half of one per cent.

For telegraphic transfers to Dawson, Valdez and Nome, two per cent on all sums.

Third: The charges for handling gold-dust shall be as follows:

Transportation and insurance on sums less than one thousand dollars, two and one-half per cent; on sums less than five thousand dollars and over one thousand dollars, shall be two and a quarter per cent; on sums over five thousand dollars two per cent; bank charges in addition to above charges for transportation and insurance, two per cent on all sums.

These charges to be based on assay value of gold and do not include exchange where the seller requires payment on the outside. Not less than ten dollars charged for assaying should be made for any sum less than one thousand dollars.

Fourth: Collection charges: Drafts with bill of lading attached, one per cent exchange plus one-half of one per cent collection charges.

Fifth: Each bank party hereto agrees to bring in at once three thousand five hundred dollars in silver coin. [9]

Sixth: Banking hours shall be from ten A. M. to four P. M., provided, that on Saturdays and other days deposits and urgent business may be attended to out of hours.

Seventh: Interest on loans, whether notes, overdrafts, or otherwise shall not be less than three per cent per month.

Eighth: No interest shall be allowed on deposits.

Ninth: Any one of the contracting parties hereto may terminate this agreement upon giving to the others thirty days' notice, and at the expiration of such said thirty days this agreement shall be at an end and the deposits hereinafter referred to shall be returned to the parties depositing the same respec-

tively; Provided, no violation has occurred to forfeit the same.

Tenth: Each of the contracting parties agrees to deposit with EDWARD J. STIER, in the town of Fairbanks, its certified check for five thousand dollars, and upon violation of any of the provisions of this agreement by any of the contracting parties, and due proof thereof made to EDWARD J. STIER, the check of the bank offending shall be cashed and the proceeds delivered to the other bank or banks not in default, and the offending member shall not thereafter be entitled to any benefit or privilege hereunder.

Eleventh: Any one of the contracting parties may request of either or both of the others, an advance of currency to the extent of ten thousand dollars in any one business day, and the party so requested, if its resources of currency so permit, shall advance the same against bill of exchange on the Seattle correspondent of the requesting bank at two per cent discount, provided, that the bank making the advance may require shipping receipt of gold-dust as collateral to such exchange; and provided, further, that if any bank refuses to advance the currency required, then this agreement may be terminated as set forth in paragraph nine hereof, but there shall be no forfeiture of the five thousand dollars deposited as mentioned in paragraph eleven hereof for any violation of this clause.

The Fairbanks Banking Company have a single customer with whom it has heretofore agreed to a lesser rate of interest on overdrafts than is above set forth, and the said Company shall not be in de-

fault under this agreement on account of such single customer.

Twelfth: A signed copy of this agreement shall be held by each of the contracting parties, and a copy also left with said EDWARD J. STIER. [10]

IN WITNESS WHEREOF, the parties hereto have signed.

FAIRBANKS BANKING CO. (Seal)
E. T. BARNETTE.
WASHINGTON-ALASKA BANK (Seal)
By W. H. PARSONS, Mgr.,
FIRST NATIONAL BANK. (Seal)
By LUTHER C. HAAS,
Cashier."

XI.

That the agreement, combination and conspiracy aforesaid, entered into on the date set forth in said written agreement was continued up to and including January 4, 1911; that when the said Nevada Company was organized as a corporation and commenced business, as aforesaid, under the name of The Fairbanks Banking Company, it also entered into and continued in the said unlawful agreement, combination and conspiracy in the place of the said copartnership theretofore carrying on business under the firm name and style of The Fairbanks Banking Company; that during all of said time the said schedule of rates and charges set forth in said agreement was unreasonably high and grossly excessive, but was, notwithstanding, substantially observed and enforced by said directors of the said three banks, and each of them; that during all of the times in

the paragraph mentioned, a vast amount of gold was handled, purchased, sold, smelted, assayed and shipped to Seattle, Washington, or San Francisco, California, under the unlawful agreement hereinbefore set forth, and large sums of money were loaned in and about said Tanana Valley, and a great amount of exchange was sold upon banks and other places in Alaska, and upon banks in Seattle, San [11] Francisco, Chicago and New York, and in foreign countries, including all the countries hereinbefore mentioned, and large sums of money and large amounts of credit were transferred by telegraph from the said Town of Fairbanks to other cities and towns in the said Territory of Alaska, and to the said cities of Seattle and San Francisco, and to all other cities or towns in the various states of the United States, and to foreign countries; all of which said business, amounting to many millions of dollars, was done in pursuance of and in compliance with the said agreement to charge, observe and enforce unreasonably high and grossly excessive charges and rates.

XII.

That the plaintiff herein is informed and believes, and therefore charges it as a fact, that for the purpose of rendering said unlawful agreement effective, each of the parties to said agreement deposited with Edward J. Stier, then and there the clerk of the District Court for the Territory of Alaska, Fourth Judicial Division, its certified check for Five Thousand ($5,000) Dollars as a penalty to be forfeited by any one of said parties violating said agreement hereinbefore set forth.

XIII.

That after entering upon said unlawful agreement, combination and conspiracy, as aforesaid, to wit, on or about the 1st day of May, 1909, the said Nevada Company and the directors, officers and stockholders of the Washington Company, defendants herein, suspected that the First National Bank of Fairbanks was secretly varying from said stipulated rates set forth in said unlawful agreement, and to prevent such variation therefrom and to carry out and effectuate the [12] purposes of said unlawful agreement, combination and conspiracy, the said Nevada Company and the directors, officers and stockholders of the Washington Company, secretly conspiring together, did pretend, on or about the 7th day of May, 1909, to purchase all of the capital stock of the said First National Bank of Fairbanks, and pretended that each of the said corporations had purchased one-half thereof; and in pursuance of said unlawful agreement and conspiracy, said directors of said Washington Company, defendants herein, did unlawfully pay out of the funds of said Washington Company, for one-half of the capital stock of the said First National Bank of Fairbanks, the sum of Sixty-two Thousand, Five Hundred ($62,500) Dollars, and the said Nevada Company did pay for the remaining one-half of the capital stock of said First National Bank of Fairbanks the sum of Sixty-two Thousand, Five Hundred ($62,500) Dollars; and thereafter the said Nevada Company and the said directors, stockholders and officers of the said Washington Company, pretending that each of said

corporations had acquired one-half of the said capital stock of the said First National Bank of Fairbanks, controlled the business affairs and conduct of said First National Bank unlawfully; that is to say, that, having obtained the absolute control of the said corporation, they, in pursuance of the combination and conspiracy hereinbefore mentioned, compelled it and its board of directors and officers to enter into an agreement, in the words and figures following, to wit:

"In order to promote a clear understanding and establish a just and equitable basis for the conduct of their business, the parties hereto subscribed have agreed and do hereby agree with each other as follows, to wit:

First: That in the settlement for any gold-dust deposited for assay, wherever it may be melted **[13]** and assayed, the party receiving the deposit will furnish an Assay Certificate on which it will make a charge to the depositor of at least two and one-half per cent (2½%) on the total of values.

Second: All gold will be purchased upon assay with the exception of lots of ten (10) ounces or less in weight, which lots shall be paid for at a price not higher than the assay value of the gold after deducting one per cent (1%) from the present schedule.

Third: That there shall be no premiums, payments, rebates or gratuities allowed and no subterfuge entered into, which might reduce the charges made on gold-dust deposited for assay below 2½% upon the total of values, with the exception of gold-dust produced by the operations of Dave Yarnall and Gus Peterson on the Dome Group, Dome Creek,

Alaska, and the royalties of Barnette, Cook, Ridenour, McGinn and Sullivan from said Dome Group, which same shall be at nine cents (9¢) per ounce over and above its assay value, as per contract with Fairbanks Banking Company, Fairbanks, Alaska, and gold-dust from No. 17 Below Goldstream known as the James Ground, at a fixed rate of $18.30 per ounce, cleaned, as per contract, but if contract should be violated from any cause and be thereby terminated, the regular assay rate of two and one-half per cent (2½%) to govern.

Fourth: That upon the deposit of gold-dust for assay with any one of the parties to this agreement, the depositor shall have advanced to his credit an amount not greater than sixteen dollars ($16.00) per ounce, and no further advance or credit shall be made until the assay has been completed; in the event that an amount greater than net assay value may have been advanced upon deposit, the deficit shall be debited to the account of the depositor.

Fifth: (a) That wherever in this agreement the words 'Private party' or 'private parties' may occur they shall mean and include all parties excepting the subscribers hereto as corporate bodies.

(b) It is agreed that no shipments will be made of any gold-dust or bullion to the outside which is not the property of the parties hereto.

Sixth: That in the purchase of gold-dust over the counter by any of the parties to this agreement where the value of dust offered for sale may be unknown (coming from newly developed creeks or claims), the value shall be determined as soon as

practicable and the value so determined shall be given to all parties interested in this agreement for their guidance in future purchases.

Seventh: (a) That the parties hereto shall close or cause to be closed on May 31st, 1909, all [14] Branch Offices, Agencies or depositories for gold, currency, etc., of any nature whatsoever, now existing or in contemplation.

(b) That no Branch Office, Agency or Depository will be opened by any of the parties hereto; that no officer, director or partner shall participate in or in any manner whatsoever enter into or promote an establishment of any kind whatsoever than that above mentioned, so long as they remain with any of the institutions subscribed hereto, which would in any manner conflict with the banking business as established by the parties hereto, on any creek now developed, or on any new creek or creeks that may be developed within a radius of three hundred miles of Fairbanks.

(c) That no Officer, Director or Agent, or any party whatsoever, shall solicit on the creeks for the benefit of any one of the interested parties subscribed hereto. Each party to this agreement may, however, employ a collector to look after the collection of any amount due it or them in order to protect itself against loss, and such collector may receive and bring to the Bank all gold-dust taken from said parties, but from none others; it being the intent and agreement not to assist in cleaning-up, accept, solicit or deliver any gold-dust except such as above stated in this paragraph.

Eighth: That no funds or credits will be furnished by any of the subscribers to any private party for the purchase of gold-dust.

Ninth: All records connected with any transaction in the gold-dust department, shall be submitted for inspection, upon request of any subscriber to this agreement.

Tenth: The minimum charge for interest on any new loan made after this date shall be Two per cent (2%) per month, except in amounts of Ten Thousand Dollars or over, on which one and one-half per cent (1½%) may be charged.

Eleventh: The rate of exchange upon drafts made by any one of the subscribers upon outside banks, shall be Twenty-five cents (25¢) per One Hundred Dollars, with the exception that upon Foreign Banks a charge on One Per Cent (1%) will be made.

Twelfth: A charge will be made on telegraphic transfers to the outside as follows:

1% On amounts of $1000 or more,

2% On amounts of $500 or less.

On amounts in excess of $500 and under $1000, the charge shall be $10; the cost of telegram to be added to the foregoing rates.

The only exception to this rate will be: **[15]** Northern Commercial Company, Fairbanks, Alaska.

On drafts or telegraphic transfers made by outside correspondence payable through either of the parties hereto, a charge will be made of one per cent (1%) on drafts and one and one-half per cent (1½%) on telegraphic transfers by the said outside

correspondents and each party hereto will notify all outside correspondents to make such rates.

Thirteenth: (a) On drafts received from the outside for collection a charge of three-quarters per cent (¾%) will be made on all such collected. All checks or cash items received from other than the correspondents to be remitted for at the rate charged for exchange on drafts to the outside.

(b) All collections except checks and cash items received from outside banks or private parties will be remitted for by draft, unless advised by the forwarding Bank or party that payment be made by wire, in which event the regular rate for telegraphic transfer plus ½% shall be charged.

Fourteenth: Out of Town items presented for payment or credit by depositors will be taken at par; from all others an exchange rate equal to the telegraphic transfer exchange rate will be made therefor.

Fifteenth: No interest will be paid on any open account subject to check, and no rate in excess of four per cent (4%) per annum will be made on Savings deposits or Time Certificates of Deposit; all deposits must remain six months to draw interest.

Sixteenth: All outside exchange or currency furnished by one Bank to another, at the request of the latter, to be paid for at an exchange rate of One per cent (1%).

Seventeenth: That this agreement may be terminated upon the establishment of another institution or in case of competition in the purchase of

gold-dust, and shall terminate automically December 31st, 1909.

Eighteenth: This agreement shall be binding upon the parties hereto subscribed and upon any Association, Institution or Syndicate now existing or that may be hereafter formed with which any officer or Director or any one of these subscribers may be in any way connected.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 10 day of May, 1909.

WASHINGTON ALASKA BANK.
By W. H. PARSONS, Mgr.
FAIRBANKS BANKING COMPANY.
By E. T. BARNETTE.
THE FIRST NATIONAL BANK.
By C. J. HURLEY.

Witnesses:
B. R. DUSENBURY.
F. E. BARFOUR. [16]

The following named places are hereby designated and agreed to as depositories by the undersigned, and this Memorandum is hereby made a part of agreement dated May 10th, 1909, signed by the parties hereto:

CHATANIKA: Fairbanks Banking Co. Branch.
Washington Alaska Bank Branch.
A. E. Eaton, for First National Bank.
(Receiving and Paying)

CLEARY CITY: C. C. C. CO., for First National Bank.
For George Moore.
(Receiving only)

LITTLE ELDORADO: Cody & Davis for
Washington Alaska Bank.
First National Bank.
Fairbanks Banking Co.
(Receiving only)

DOME CITY: Washington Alaska Bank Branch.
George C. Thomas for
First National Bank.
Horr & Chiles for
Fairbanks Banking Company.
(Receiving and Paying)

FAIRBANKS CREEK: Herman Wobber or
George Wilson for
Washington Alaska Bank.
First National Bank.
Fairbanks Banking Co.
(Receiving and Paying)

FOX: Chesley & Ryan for
First National Bank.
Horr & Chilee for
Washington Alaska Bank.
E. Aubert for
Fairbanks Banking Co.
(Receiving and Paying)

Dated at Fairbanks, Alaska, the 16th day of June, 1909.

WASHINGTON ALASKA BANK.
By W. H. PARSONS,
Manager.
FAIRBANKS BANKING COMPANY.
By JAMES W. HILL,
V.–President.
FIRST NATIONAL BANK.
By C. J. HURLEY,
President. **[17]**

XIV.

On the 10th day of May, 1909, the directors, stockholders and officers of the Washington Company, pretending that said company was the owner of and controlled one-half of the stock of the First National Bank of Fairbanks, and said Washington Company in fact controlling one-half of the stock of said First National Bank, and the Nevada Company pretending to own and control, and in fact controlling the other one-half of the stock of the First National Bank of Fairbanks, did, secretly and in pursuance of the conspiracy as hereinbefore set forth, further conspire together and enter into an illegal agreement, which said agreement is in the words and figures following, to wit:

"THIS AGREEMENT made and entered into by and between the FAIRBANKS BANKING COMPANY, of Fairbanks, Alaska, and the WASHINGTON ALASKA BANK, of Fairbanks, Alaska, both corporations doing business under a charter in the town of Fairbanks, Alaska, WITNESSETH:

It is hereby agreed that commencing on the 10th day of May, 1909, and terminating December 31st, 1909, that one and one-half per cent (1½%) of the two and one-half per cent (2½%) charged upon the purchase of all dust handled will be divided equally between the parties hereto, with the exception of that handled from Gus Peterson and Dave Yarnall from their operations on the Dome Group, Dome Creek, Alaska, and of that from the royalties from said Dome Group, upon which the basis of division of profits will be nine cents (9¢) less per ounce than the two and one-half per cent (2½%) charged on dust, and with the exception of that handled from No. 17 Below Goldstream upon which the division of profit will be, the difference between eighteen dollars and thirty cents ($18.30) per ounce, and the average value per ounce for the season 1909, less per ounce than the two and one-half per cent (2½%) charge on dust.

It is further understood and agreed that the Washington Alaska Bank shall have the right to handle an equal amount of any Gold-dust as the Fairbanks Banking Company does from the Dome Group, as above mentioned, at the same basis rate, that is, at nine cents (9¢) less than assay value less two and one-half per cent (2½%). [18]

And it is further understood and agreed that the Fairbanks Banking Company shall have the right to handle the same amount of any dust as the Washington Alaska Bank does from No. 17 Below Goldstream, less the amount handled by said Fairbanks

Banking Company from the same claim, at the same basis rate, that is at a rate of approximately nineteen cents (19¢) (if according to average for 1909), less than the assay value less two and one-half per cent (2½%), except as may be stipulated in contract between the Fairbanks Banking Company, Washington Alaska Bank and The First National Bank, all of Fairbanks, Alaska, of even date herewith.

Dated at Fairbanks, Alaska, this 10th day of May, 1909.

WASHINGTON ALASKA BANK.
By W. H. PARSONS.
FAIRBANKS BANKING COMPANY.
By E. T. BARNETTE.

In the presence of:
B. R. DUSENBURY."

XV.

That while the directors, stockholders and officers of the said Washington Company, defendants herein, and the said Nevada Company were conducting and carrying on a banking business in pursuance of said unlawful combination and conspiracy in restraint of trade and commerce, they, on or about the 13th day of September, 1909, agreed together, in order to effect the absolute concentration and to obtain the absolute control of the banking business in the Town of Fairbanks, the Tanana Valley and the country adjacent thereto, and in order to make still more secure and to render permanent the said unlawful restraint of trade and commerce, that the stockholders and directors of the said Washington

Company should sell to the Nevada Company all of the capital stock and all the assets of the said Washington Company, and that said Nevada Company should purchase from the stockholders and directors of the said Washington Company all said capital stock and assets, and that the said directors, stockholders **[19]** and officers of said Washington Company should compel the said Washington Company to deliver to the Nevada Company their trust and offices as directors and all the moneys, property and assets, whatsoever, of said Washington Company, together with one-half of the capital stock of the First National Bank of Fairbanks then and there under the control and pretended ownership of said Washington Company, the remaining one-half of the capital stock of the First National Bank being then and there under the control of the Nevada Company; and, accordingly, on or about the date last named, and in pursuance of said combination and conspiracy in restraint of trade and commerce, the board of directors of the Nevada Company made and caused to be entered on the corporate books of said Nevada Company the following resolution, which is in the words and figures following, to wit:

"MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE FAIRBANKS BANKING COMPANY.

Fairbanks, Alaska, September 13, 1909.

The regular monthly meeting of the Board of Directors of the Fairbanks Banking Company was held at the office of the corporation, Fairbanks, Alaska, at 9:30 P. M.

E. T. Barnette, President, presiding, and B. R. Dusenbury, Secretary, present.

MEMBERS PRESENT:

J. A. Jesson;
Charles J. Robinson;
Dave Yarnall;
E. T. Barnette;
James W. Hill;

L. N. Jesson, Second Vice-President, was also present, * * *

E. T. Barnette, President, explained to the Board the negotiations that were under way for the purchase of the Washington-Alaska Bank for $250,000.-00. As the matter had been discussed informally with different members of the Board prior to the meeting, after [20] a brief discussion at this time, it was moved by Hill, seconded by Yarnall, that the Fairbanks Banking Company purchase the stock of the Washington-Alaska Bank at a net figure of $250.000.00. Motion carried.

B. R. DUSENBURY,
Secretary.

Approved 10/12/09."

"MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE FAIRBANKS BANKING COMPANY.

Fairbanks, Alaska, September 14, 1909.

Pursuant to adjournment, meeting of the Board of Directors of the Fairbanks Banking Company was held at the office of the corporation at Fairbanks, Alaska, at 8 P. M.

E. T. Barnette, President, presiding and B. R. Dusenbury, Secretary, present.

MEMBERS PRESENT:

J. A. Jesson;
C. J. Robinson;
James W. Hill;
Dave Yarnall;
E. T. Barnette;
John L. McGinn;
L. N. Jesson, 2d Vice-President, was also present.

The action of the Board regarding the purchase of the Washington-Alaska Bank, as had at its meeting September 13, 1909, was confirmed. * * *

B. R. DUSENBURY.

Approved 10/12/09."

XVI.

That thereafter the defendants W. H. Parsons, Falcon Joslin, John Schram, E. L. Webster, J. W. Clise, F. E. Barbour and the Washington Securities Company, a corporation, [21] pretended to sell, transfer and assign unto the Nevada Company all of their shares of stock, being all of the stock of the Washington Company, which said pretended sale, transfer and assignment was evidenced by the following writing, in the words and figures following to wit:

"For value received, ——— hereby sell, assign and transfer unto the Fairbanks Banking Company, Fairbanks, Alaska, ——— shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint ——— to transfer

on said books of the within named corporation with full power of substitution in the premises.

Dated, September ——, 1909."

That in pursuance of said agreement, each of the said stockholders signed their names, respectively, to their respective certificates of said shares of the capital stock of the said Washington Company, and on said date the Nevada Company caused a telegraphic transfer to be made in the sum of One Hundred Twenty-five Thousand ($125,000.00) Dollars, to be paid to the Washington Trust Company, a corporation, for the defendants John Schram, J. W. Clise, Falcon Joslin, E. L. Webster, W. H. Parsons, F. E. Barbour and the Washington Securities Company, a corporation, which said sum was duly paid to said defendants, and upon the delivery of their said stock to the agent of said Nevada Company, the further sum of One Hundred Twenty-five Thousand ($125.-000.00) Dollars was placed by the order and direction of the Nevada Company in the banking house of the Washington Company pending the delivery by said John Schram, E. L. Webster, W. H. Parsons, Falcon Joslin, F. E. Barbour, J. W. Clise and the Washington Securities Company of their said stock, under a certain agreement in writing, which is in the words and figures as follows to wit: [22]

"Fairbanks, Alaska, September 16th, 1909.

RECEIVED OF Fairbanks Banking Company, Fairbanks, Alaska, the sum of One Hundred and Twenty-five Thousand Dollars ($125,000) in trust to be held by us pending the delivery by W. H. Parsons,

of the Washington-Alaska Bank, of Certificates of Stock covering three hundred and seventy-five (375) shares of the capital stock of the Washington-Alaska Bank, Fairbanks, Alaska, properly endorsed, and pending the receipt by the Fairbanks Banking Company, Fairbanks, Alaska, of telegraphic advice from National Bank of Commerce, Seattle, Washington, of the delivery to them by the Washington Trust Company, of Seattle, Washington, of Certificates of Stock covering Eleven hundred and twenty-five (1125) shares of the Capital Stock of the Washington Alaska Bank properly endorsed. When notified by the Fairbanks Banking Company that such advice has been received the Washington-Alaska Bank is to deliver the said Certificates of Stock covering three hundred and seventy-five (375) shares of the Capital Stock of the Washington-Alaska Bank to the Fairbanks Banking Company and is to pay W. H. Parsons the sum of one hundred and twenty-five thousand dollars ($125,000.00).

WASHINGTON–ALASKA BANK, FAIRBANKS, ALASKA,

By GEO. B. MIRCH,

Asst. Cashier.

The above arrangement is satisfactory.

FAIRBANKS BANKING COMPANY,

By B. R. DUSENBURY,

V. P.

W. H. PARSONS."

XVII.

That thereafter, and upon said payment, aggregating Two Hundred Fifty Thousand ($250,000) Dol-

lars, having been made, the directors of said Washington Company, in pursuance of said unlawful agreement, combination and conspiracy in restraint of trade and commerce, entered into an agreement with the Nevada Company, by and through E. T. Barnette, its president and manager, which agreement is in the words and figures following to wit:

"THIS AGREEMENT made and entered into this 18th day of September, 1909, by and between the Washington-Alaska Bank, a corporation organized [23] under the Laws of the State of Washington, W. H. Parsons, Falcon Joslin, E. L. Webster, and F. E. Barbour, parties of the first part, and E. T. Barnette, of Fairbanks, Alaska, party of the second part, WITNESSETH:

THAT WHEREAS the Fairbanks Banking Company has purchased the entire capital stock of the Washington-Alaska Bank, a corporation organized and existing under and by virtue of the Laws of the State of Washington, and engaged in the business of banking in the City of Fairbanks or adjacent creeks, Territory of Alaska;

AND WHEREAS as a part of the consideration of said transfer and as an inducement to the said Fairbanks Banking Company to purchase said stock and said banking institution, the said parties of the first part and each and all of them, have promised and agreed to and with the party of the second part, that they or either of them will not engage in the banking business in the City of Fairbanks or adjacent creeks, Territory of Alaska, for a period of five years from the date hereof, either as owners,

agents, servants or employees of any banking institution, and that they or either of them will not organize or promote the organization of any corporation to engage in the banking business in said City of Fairbanks or adjacent creeks for said period, and that they will not become the stockholder of any corporation or stock company organized for the purpose of carrying on banking in said City of Fairbanks or adjacent creek, or become a party to any partnership organized for the carrying on of said banking business at said place within the period above specified, or engage in the banking business in any way as a stockholder of any corporation or stock company or member of a copartnership, or as a manager, agent or employee of any such banking institution;

AND WHEREAS it is desired that said agreement be reduced to writing;

NOW, THEREFORE, the parties of the first part for and in consideration of the sum of One Dollar, and other good and valuable considerations to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and in consideration of said Fairbanks Banking Company purchasing the entire stock of said Washington-Alaska Bank and the property of said corporation, DO HEREBY PROMISE, COVENANT AND AGREE to and with the said party of the second part not to *gage* in the business of banking in any way in the city of Fairbanks or adjacent creeks, Territory of Alaska, for a period of five years from the date hereof, and that they will not promote the organization of or organize any corporation or stock company

for the purpose of carrying on banking business within said City of Fairbanks or adjacent creeks, for a period of five years, or become a member of a [24] partnership organized for said purpose or become a member of any partnership that may be engaged in banking in said place within said time, and that they will not, as manager, agent or employee, engage in any way in the banking business within said time and place; it being the intention of this agreement that in consideration of said transfer above mentioned, said parties of the first part shall not in any way or in any capacity, be connected with any banking institution within said city of Fairbanks or adjacent creeks, within a period of five years from the date hereof.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals this the day and year first above written.

_____

By _____,
FALCON JOSLIN.
E. L. WEBSTER.
F. E. BARBOUR.
W. H. PARSONS.

In the presence of:

_____.

_____.

United States of America,
District of Alaska,—ss.

THIS IS TO CERTIFY that before me, a Notary Public in and for the District of Alaska, appeared the Washington-Alaska Bank, a corporation duly organized and existing under and by virtue of the

Laws of the State of Washington, by and through ———, said ——— being personally known to me and also personally known to me to be the ——— of said corporation; and said Washington-Alaska Bank acknowledged to me that it executed the foregoing instrument freely and voluntarily for the uses and purposes therein specified; and also appeared before me W. H. Parsons, Falcon Joslin, E. L. Webster and F. E. Barbour, to me well and truly known to be the individuals described in and who executed the foregoing instrument, and each for himself and not one for the other acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein specified.

WITNESS MY HAND AND OFFICIAL SEAL at Fairbanks, Alaska, this —— day of September, 1909.

_____,

Notary Public for Alaska." [25]

XVIII.

That on said 16th day of September, 1909, and for a long time prior thereto, the said Nevada Company was insolvent, its liabilities on said 16th day of September, 1909, exceeding its assets in the amount of Five Hundred Thirty-five Thousand ($535,000) Dollars, and that said sum of Two Hundred Fifty Thousand ($250,000) Dollars was paid to the defendants herein out of the moneys and funds of the depositors and creditors of said Nevada Company, all of which the defendants herein, and each of them, then and there well knew.

XIX.

That the condition of said Washington Company on said 16th day of September, 1909, was as follows: It had received in the usual course of business and had on hand a large sum of money from various depositors, to wit, the sum of One Million Eight Hundred Forty-eight Thousand Twenty-seven and 72/100 ($1,848,027.72) Dollars, which said sum was payable on demand to a large number of depositors; it had in outstanding circulation, under the form of scrip, the sum of Ninety-four ($94) Dollars; it had on hand in alleged unpaid declared dividend amounting to Four Thousand Five Hundred ($4,500) Dollars; its outstanding capital stock was of the par value of One Hundred Fifty Thousand ($150,000) Dollars; its assets amounted to One Million Nine Hundred Sixty-three Thousand Six Hundred Eighteen and 06/100 ($1,963,618.06) Dollars. That though its capital stock did not possess a value in excess of the sum of One Hundred Ten Thousand ($110,000) Dollars, yet there was at said time sufficient assets to pay, liquidate or satisfy, [26] in full, all the demands of its depositors and creditors; that the difference of One Hundred Forty Thousand ($140,000) Dollars between the true value of the capital stock of said Washington Company and the Two Hundred Fifty Thousand ($250,000) Dollars paid therefor was declared by the defendants to be a bonus, but in truth and in fact was an advance of the future unlawful profits, and the share of the defendants therein, to be made by the Nevada Company, for the benefit of all parties to said agreement,

out of the unlawful agreement and combination in restraint of trade and commerce, hereinbefore set forth, and was paid by said Nevada Company out of the funds of its depositors, as aforesaid, to the directors and stockholders of said Washington Company as such directors' and stockholders' share of such unlawful profits in advance, as defendants herein, and each of them, then and there well knew.

XX.

That in pursuance of said combination and conspiracy in restraint of trade and commerce, and said pretended sale and purchase, and on or about the 22d day of January, 1910, the directors and stockholders of said Washington Company agreed with the Nevada Company to perfect, and did perfect, the said unlawful combination in restraint of trade and commerce by causing the directors of said Washington Company to surrender, by instrument in writing, their offices as directors of said Washington Company to a board of directors designated, selected and controlled by said Nevada Company, and by surrendering to such board of directors the control and management of said Washington Company for the purpose of restraint of trade and commerce, as aforesaid; that thereafter, and at all times up to and including the 4th day of January [27] 1911, the said board of directors so designated, selected and controlled as aforesaid by said Nevada Company, and the officers selected by said last-named board of directors, did conduct and operate said Washington Company in the manner following, to wit: by and through the said board of directors and officers so

selected, designated and controlled, as aforesaid, by said Nevada Company until the 1st day of October, 1910, and thereafter and at all times down to the 4th day of January, 1911, as a pretended consolidated corporation composed of the two corporations, namely, the Washington Company and the Nevada Company, as will be hereinafter more particularly alleged; that the said Nevada Company, in pursuance of said unlawful conspiracy and combination in restraint of trade and commerce hereinbefore set forth, so conducted and operated said Washington Company during all of said times from September, 1909, until January 4, 1911, solely with a view to the welfare, advantage, and benefit of the said Nevada Company and of its directors and stockholders, and without any regard whatsoever for the rights or welfare of the said Washington Company or its depositors and creditors, and without making any provision for the payment and satisfaction of the creditors of said Washington Company, but, on the contrary, with the view, object, intent and result of suppressing the competitive power and force of said Washington Company, and its entity, in violation of law; and in pursuance of said policy and of said unlawful agreement, combination and conspiracy, and as a result of the control of the Washington Company given and obtained as aforesaid, said Nevada Company, with the knowledge and consent of the defendants herein, and each of them, took from the said Washington Company all of its assets and dissipated, wasted and converted the same, which assets have [28] never been, in part or in whole, repaid or restored to the said Washington Company.

XXI.

That on or about the 1st day of October, 1910, at the Town of Fairbanks, in the Territory of Alaska, the officers and directors of the said Nevada Company and the directors and officers so selected and designated, as aforesaid, by the Nevada Company as the officers and directors of the said Washington Company, with the knowledge and consent of the defendants herein, falsely and fraudulently pretended to consolidate the said Nevada Company with the said Washington Company, and then and there caused a physical commingling of the movable property, effects and assets of said two banks, and the occupation of the same office by said two banks, and the conduct of the business of the said two banks at all times thereafter, as the business apparently of one consolidated or merged corporation, and represented and announced to the creditors and depositors of both of said banks, and to the public generally, then and at all times thereafter, that the said two banks were then and there in fact and in law consolidated, whereas, in truth and in fact, as the defendants herein, and each of them, well knew, the said two banks were not then and there, or at any time whatsoever, lawfully consolidated, or at all; that the said Nevada Company on or about the 8th day of October, 1910, to the knowledge and with the consent of the defendants herein, changed its name to the Washington-Alaska Bank for the purpose of deceiving the depositors and creditors of said Washington Company and the public generally; that at all times after the securing of control over the said Washing-

ton Company [29] in September, 1909, as aforesaid, by the said Nevada Company, the said Nevada Company, by the acquiescence of and with the approval and consent of the defendants herein, and each of them, absolutely controlled the said Washington Company and all its assets; that the said Nevada Company, by means of the acquiescence and consent of the defendants herein, and each of them, was at the time of the said pretended consolidation, and at all times thereafter, except as hereinafter alleged, enabled to deceive and did deceive the creditors and depositors of said Nevada Company, the creditors and depositors of the Washington Company and the public generally, into believing that there had been and was a lawful consolidation of the said banks, and that none of the assets of the said Nevada Company or of the said Washington Company had been withdrawn; that such belief was caused by virtue of the control over the said Washington Company delivered and given, as aforesaid, to the said Nevada Company in pursuance of the said unlawful agreement, combination and conspiracy in restraint of trade and commerce between the defendants herein and the said Nevada Company.

XXII.

That on the 4th day of January, 1911, the said Nevada Company, so conducting the business of itself and of said Washington Company, as aforesaid, closed its doors and ceased to do a banking business; and on the 5th day of January, 1911, in a certain suit entitled "Tanana Valley Railroad Company, a corporation, and John Zug, Plaintiffs, vs. Washing-

ton-Alaska Bank, a corporation, Defendant,'' in the District Court for the Territory of Alaska, Fourth Judicial Division, said Court being then and at all times herein mentioned a Superior Court with full equity and common-law [30] powers and having then and there jurisdiction of the parties and of the subject matter of said suit, said cause being numbered 1597 of the civil causes in said court, an order was duly made and entered by said Court appointing a receiver for said Nevada Company and its assets and directing him to preserve and distribute the same as ordered by said Court and granting him full power to collect and, under the orders of said Court, to distribute the assets in Alaska of said Nevada Company; that thereafter, on the 6th day of January, 1911, a coreceiver to said first receiver was appointed by said District Court, with like powers to be exercised jointly; that said receivers, immediately following their said respective appointments, duly qualified as such receivers; that thereafter, on the 12th day of May, 1911, the said receivers, and each of them, resigned their said office as receivers and said resignations were duly accepted by said District Court of Alaska; that on said 12th day of May, 1911, the said F. G. Noyes, plaintiff herein, was, by order of said Court, duly appointed receiver of said defendant in said cause and of all its assets wheresoever situated, with like power and authority equivalent to that exercised by said coreceivers theretofore appointed; and thereupon said Noyes qualified as such receiver under the laws of the Territory of Alaska, and ever since said 12th day of May, 1911, has been

and now is such duly appointed, qualified and acting receiver of the defendant corporation in said cause.

XXIII.

That the creditors and depositors of the said Washington Company and of the said Nevada Company, and the public generally, in said Town of Fairbanks, and in and **[31]** about said Tanana Valley and country adjacent thereto, and said District Court of the Territory of Alaska, and said receivers, and each of them, and the respective attorneys for said receivers, did not know or have notice, nor did any of them know or have notice, that the said pretended sale of the capital stock of said Washington Company was fraudulent, null and void, nor that said pretended consolidation was likewise fraudulent, null and void, nor that said representations and statements that the Nevada Company and the Washington Company had lawfully consolidated and merged were and that each thereof was absolutely false and fraudulent; that, on the contrary, the said receivers, and each of them, relying upon and believing said representations and statements made as aforesaid, under orders made in said cause No. 1597 of said Court, distributed dividends aggregating Fifty Cents (50¢) on the dollar to the creditors and depositors of the said Washington Company and said Nevada Company, on the erroneous assumption that the creditors of said Washington Company and said Nevada Company were the creditors and depositors of said supposed consolidated and merged corporations; that all of the creditors and depositors of said Nevada Company

and of said Washington Company also relied upon and believed said false and fraudulent representations and statements, and none of the creditors of either of said companies knew that the said pretended consolidation was false or fraudulent, or that Four Hundred Seventy-five Thousand ($475,000) Dollars of the assets of the alleged consolidated corporations had been withdrawn prior to said alleged merger and consolidation; and that at no time prior to March, 1915, did any creditor, depositor or other person interested in the administration of the assets of the said **[32]** Washington Company have any notice or knowledge of the existence of said combination and conspiracy to restrain trade and commerce as aforesaid, or any notice or knowledge that said representations and statements and said pretended consolidation were false and fraudulent, except the defendants herein and the said Nevada Company; that in March, 1915, and not prior thereto, said Noyes was advised by counsel, residing and practicing in San Francisco, California, that the laws of Nevada did not, either then or at the time of said pretended purchase and sale of the stock of said Washington Company and of the alleged consolidation, permit of the sale and purchase by a banking corporation organized under the laws of the State of Nevada of the stock of a banking corporation, or of the consolidation of a corporation organized under the laws of the State of Nevada with a corporation organized under the laws of any other State, territory or country; that the said receiver and the creditors and depositors of said Washington

Company were then and there for the first time advised by said counsel that the receivers appointed in said cause No. 1597 were not the receivers of the said Washington Company and its assets in Alaska, and that in consequence no receiver had been lawfully appointed for said Washington Company; that in May, 1915, as a result of the information and advice so received by said receiver and the depositors and creditors of said Washington Company, one of the creditors of the said Washington Company, to wit, J. H. Groves, suing for himself and all other creditors of the said Washington Company, commenced a suit, the same being No. 2113 of the civil causes of said District Court for the Territory of Alaska, Fourth Judicial Division, against the Washington Company and against the said F. G. Noyes, as receiver of the said Nevada Company, **[33]** who was then and there in possession of the assets and books of account of the Washington Company, under the erroneous belief and assumption that said Washington Company was lawfully consolidated with said Nevada Company; that said last-named suit was entitled "J. H. Groves, Plaintiff, vs. Washington-Alaska Bank, a corporation, and F. G. Noyes, as Receiver of the Washington-Alaska Bank, a Corporation, Defendants"; that thereafter, the said District Court for the Territory of Alaska, Fourth Judicial Division, having jurisdiction of the subject matter and of the parties to said suit, made an order appointing the said F. G. Noyes, who then and there had possession of the assets of said Washington Company under said erroneous belief and assumption as

aforesaid, the receiver of said Washington Company and of all of its assets in Alaska, and authorizing, directing and empowering said F. G. Noyes to retain and take the said assets of the said Washington Company and administer the same under the orders of said Court; and thereupon said F. G. Noyes qualified as such receiver under the laws of the Territory of Alaska, and ever since the month of May, 1915, has been and now is such duly appointed, qualified and acting receiver of said Washington Company; that thereafter on the 27th day of July, 1915, the said District Court for the Territory of Alaska, then and there having jurisdiction of the subject matter and of the parties in said cause No. 2113, duly made and entered an order of reference in said cause, and ordered that testimony be taken, an inquiry be made, all accounts be stated, and all facts be disclosed and found and conclusions of law be made thereon; that in pursuance of said order and in pursuance of a like order made in said cause No. 1597, references were had, testimony was taken, inquiry was duly **[34]** made, a full list of the creditors and debtors of the said Washington Company was ascertained, and the assets and liabilities of said Washingon Company and of the said Nevada Company were segregated and ascertained, respectively; that in the findings of fact and conclusions of law made as ordered in said orders of reference, it was found and concluded, among other things, by the referee appointed in said orders of reference, that the said Washington Company was on January 5, 1911, and at all times thereafter, insolvent, and

that said pretended sale of stock and consolidation was unlawful, fraudulent, null and void; that thereafter, and on the 24th and 30th days of July, 1915, respectively, the said District Court for the Territory of Alaska, Fourth Judicial Division, duly made and entered decrees in said causes numbered 1597 and 2113, respectively, approving and adopting as its own the said findings and conclusions of said referee; that in the course of said accounting made by said referee, as aforesaid, it first became known to said F. G. Noyes and to the creditors and depositors of said Washington Company that the said agreement, combination and conspiracy to restrain trade and commerce in the Territory of Alaska, and between said Territory and the several States of the Union, and between said Territory and foreign countries, had been entered into and perfected; that likewise in said accounting it first became known to said F. G. Noyes, receiver of said Washington Company, and to the creditors and depositors of said Washington Company that the said Nevada Company had, in violation of the laws and statutes made and provided by the State of Washington, the State of Nevada and the United States of America, unlawfully combined and conspired with the defendants herein to purchase the stock and assets of [35] said Washington Company and to appropriate and waste said assets as aforesaid; that from the said creditors of said Washington Company and from all persons interested in the administration of its assets, except said conspirators, including these defendants, all knowledge and notice of said combination and

conspiracy in restraint of trade and commerce and of the fraudulent and unlawful character of said pretended consolidation and of the fraudulent appropriation by the Nevada Company of the Washington Company's assets, as aforesaid, were concealed by means of said false and fraudulent statements, representations and acts of the defendants and their said co-conspirators, and by the nature of said fraud, until information aforesaid was obtained in San Francisco in the month of March, 1915, and until said accounting was taken as hereinbefore set forth.

XXIV.

That on the 8th day of September, 1915, in an action pending in the Superior Court of the State of Washington in and for King County, wherein Elizabeth Smart is plaintiff and the said Washington-Alaska Bank, a Washington corporation, is defendant, the said Court having jurisdiction of the parties to said action and of the subject matter thereof, the said F. G. Noyes, aforesaid, was by said Court duly appointed receiver of said corporation and by order of said Court authorized to take the assets of said corporation within the State of Washington and to proceed to collect, demand and enforce any and all choses in action in favor of said corporation existing within the State of Washington; and the said F. G. Noyes has duly qualified as such receiver under the laws of the State of Washington, and ever since said time has been and now is the receiver of said corporation [36] within the State of Washington and entitled to its assets and property within the State.

XXV.

In the said accounting hereinbefore mentioned, and after the assets and liabilities of the Washington Company and of the Nevada Company had been segregated and ascertained, respectively, and in the findings of fact and conclusions of law so made by the referee, as aforesaid, in pursuance of said order of reference, which said findings and conclusions were adopted by the Court as aforesaid, it was found and concluded that, after all due credits had been given, the said Nevada Company was and is insolvent and indebted to its creditors in the sum of Two Hundred Eighty-three Thousand Six Hundred Seventy-five and 84/100 ($283,675.84) Dollars, together with interest thereon from the 1st day of June, 1915, at the rate of eight (8%) per cent per annum, and that there were and are no other assets of said Nevada Company available to its receiver, and that the said Washington Company was and is insolvent and indebted to its creditors in the sum of Three Hundred Seventy-eight Thousand Nine Hundred Seventy-seven and 73/100 ($378,977.73) Dollars for principal on the 4th day of January, 1911, when it suspended payment, and for interest upon said sum, computed up to the 1st day of June, 1915, at the rate of eight (8%) per cent per annum, in the sum of One Hundred Thirty-three Thousand Five Hundred Seventy-nine and 45/100 ($133,579.45) Dollars, being a total of Five Hundred Twelve Thousand Five Hundred Fifty-seven and 17/100 ($512,557.17) Dollars; that all of the assets of said Washington Company had been realized upon, disposed of and distributed, ex-

cept assets in possession of said F. G. Noyes to the value of Four Thousand Four Hundred Thirty ($4,430) [37] Dollars, and that there was still due and owing to its creditors, after giving due credit for said sum of Four Thousand Four Hundred Thirty ($4,430) Dollars, the said sum of Five Hundred Twelve Thousand Five Hundred Fifty-seven and 17/100 ($512,557.17) Dollars, and that there are no other assets in the Territory of Alaska or elsewhere to pay or liquidate said sum, save and except the statutory liability of the stockholders of said Washington Company, which the plaintiff is unable to collect from the Nevada Company and which the defendants herein have ever refused and now refuse to pay to the plaintiff or to said Washington Company or to its creditors, or at all.

XXVI.

That by reason of and through the unlawful acts of the defendants, as hereinbefore set forth, the Washington Company has been injured in its business and property in the sum of One Hundred Ten Thousand ($110,000) Dollars, said One Hundred Ten Thousand ($110,000) Dollars being the surplus over and above its liabilities to creditors, excepting stockholders, which said surplus said Washington Company owned and possessed on or about the 16th day of September, 1909, in the sum of Five Thousand ($5,000) Dollars, said Five Thousand ($5,000) Dollars being the loss of the use of said Sixty-two Thousand Five Hundred ($62,500) Dollars paid by said defendants, as aforesaid, for one-half of the stock of the First National Bank, and in the

sum of Five Hundred Twelve Thousand Five Hundred Fifty-seven and 17/100 ($512,557.17) Dollars, said Five Hundred Twelve Thousand Five Hundred Fifty-seven and 17/100 ($512,557.17) Dollars, being the amount necessary to liquidate the obligations of said Washington Company to its depositors. [38]

XXVII.

Save as hereinbefore averred there never has at any time been any receiver or trustee of said Washington Company clothed with any of the powers hereinbefore set forth as the powers of the plaintiff receiver herein, or at all.

XXVIII.

That the defendant Jane Doe Parsons is and at all the times herein mentioned was the wife of the said defendant W. H. Parsons; that the defendant Jane Doe Joslin is and at all the times herein mentioned was the wife of the said defendant Falcon Joslin; that the defendant Jane Doe Schram is and at all the times herein mentioned was the wife of the said defendant John Schram; that the defendant Jane Doe Webster is and at all the times herein mentioned was the wife of the said defendant E. L. Webster; that the defendant Jane Doe Clise is and at all the times herein mentioned was the wife of the said defendant J. W. Clise; that the defendant Jane Doe Barbour is and at all the times mentioned was the wife of said defendant F. E. Barbour. Said wives are made defendants herein to the end that their respective community property interests may be bound by any judgment or decree made in this suit.

XXIX.

That Fifty Thousand ($50,000) Dollars is a reasonable sum to be allowed as attorneys' fees in this suit.

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, in the sum of One Million Eight **[39]** Hundred Eighty-two Thousand Six Hundred Seventy-one and 51/100 ($1,882,671.51) Dollars, together with the sum of Fifty Thousand ($50,000) Dollars as attorneys' fees, and for his costs and disbursements herein.

de JOURNEL & de JOURNEL,
ROY V. NYE,
HUGHES, McMICKEN, DOVELL & RAMSEY,
Attorneys for Plaintiff. **[40]**

State of Washington,
County of King,—ss.

F. G. Noyes, being first duly sworn, on oath deposes and says:

That he is the duly appointed and qualified receiver of the Washington-Alaska Bank, a corporation organized and existing under and by virtue of the laws of the State of Washington, and of all the assets of said corporation in the said State of Washington, and as such receiver is plaintiff in this case; that he has read the foregoing complaint, knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

F. G. NOYES.

Subscribed and sworn to before me this 16th day of December, A. D. 1915.

[Seal] JOHN P. GARVIN,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. Jan. 19, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. **[41]**

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver,

Plaintiff,

vs.

W. H. PARSONS et al.,

Defendants.

Demurrer.

Come now the defendants herein and demur to the complaint upon the ground and for the reasons that it appears upon the face thereof:

1. That the plaintiff has no legal capacity to sue;
2. That there is a defect of parties defendant;
3. That the complaint does not state facts sufficient to constitute a cause of action;
4. That the action has not been commenced within the time limited by law.

CLISE & POE,
PETERS & POWELL,
Attorneys for Defendants.

Service of within Demurrer and receipt of copy thereof admitted this 23d day of March, 1916.

HUGHES, McMICKEN, DOVELL & RAMSEY,

For Pltf.

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. Mar. 23, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [42]

United States District Court, Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,

Plaintiff,

vs.

W. H. PARSONS et ux., FALCON JOSLIN et ux., JOHN SCHRAM et ux., F. E. BARBOUR et ux., and WASHINGTON SECURITIES COMPANY, a Corporation,

Defendants.

Opinion.

Filed June 27, 1916.

ON DEMURRER TO COMPLAINT.
DEMURRER SUSTAINED.

de JOURNEL & de JOURNEL, ROY V. NYE, HUGHES, McMICKEN, DOVELL & RAMSEY, for Plaintiff.

PETERS & POWELL, CLISE & POE, for Defendants.

NETERER, District Judge:

This is an action for the recovery of $1,882,671.51, damages alleged to accrue to plaintiff under Section Seven of the Sherman Act, together with the sum of $50,000 attorneys' fees. It is alleged, in substance, that on the 24th of February, 1905, the Washington-Alaska Bank, a corporation of the State of Washington, was organized, for the purpose of carrying on a general banking business in the Territory of Alaska. That since said time the First National Bank of Fairbanks, a corporation duly organized under the national banking laws, has been conducting a general banking business in the town of Fairbanks. That from the month of October, 1905, until March, 1908, E. T. Barnette, James Hill, and R. C. Wood, as copartners, conducted a general banking business in the town of Fairbanks under the [43] name of the Fairbanks Banking Company. That on the 21st of January, 1908, the Fairbanks Banking Company was incorporated under the laws of the State of Nevada, and by amendment, on the 8th day of Octo-

ber, 1910, the name of this corporation was changed to Washington-Alaska Bank, and that it took over the banking business of the Fairbanks Banking Company, a copartnership. That all of said banking companies were organized for the purpose of carrying on and conducting a general banking business in the town of Fairbanks, Alaska. That the defendants John Schram, J. W. Clise, Washington Securities Company, F. E. Barbour, Falcon Joslin, and W. H. Parsons, have been stockholders of the Washington-Alaska Bank, the Washington corporation, from its organization, and the defendant E. L. Webster has been a stockholder of said company since September 15, 1906. That John Schram, J. W. Clise, Falcon Joslin, and W. H. Parsons, were directors of said company from its organization, and F. E. Barbour and E. L. Webster since February 3, 1909. That the said three banking corporations were the only banking concerns in the town of Fairbanks, and no other bank was located within three hundred fifty miles of said town, or within six days' travel. That the main industry supporting the town of Fairbanks, the said Tanana Valley and the country surrounding said valley is placer mining. That many millions of dollars of gold was taken from said district annually, and that the said three banks were the only avenues through which the said gold found its way into the markets, and that a large revenue was derived to the banks in issuing domestic and foreign exchange into various parts of the world. It is further alleged that during the year 1905 the said banking companies, "through their respective Boards of Direc-

tors, officers and managers, secretly, unlawfully, and in violation of Section 3 of the Act of Congress of July 2, 1890 (commonly known and called [44] the 'Sherman Anti-Trust Act'), agreed, combined and conspired together to restrain trade and commerce in the Territory of Alaska and between said Territory and the several states of the Union, and between said Territory and foreign nations, in this, to wit: The Board of Directors, managers and officers of the said three banks then and there secretly agreed together and with one another to conduct their said several banking businesses noncompetitively, and in order to effect and secure such noncompetitive conduct thereof, the Board of Directors of each of said three banks, by its managing officer, then and there entered into an agreement," which is set out, in which appears a schedule of charges to be made for exchange, etc., and further alleges, that the "agreement, combination and conspiracy" was continued to and including January 4, 1911; that when the Washington-Alaska Bank, a Nevada corporation, was organized under the name of the Fairbanks Banking Company, it also entered into and continued in the said unlawful agreement, combination and conspiracy in place of the copartnership. It is alleged that during all of the times mentioned "a vast amount of gold was handled, purchased, sold, smelted, assayed and shipped to Seattle, Washington, or San Francisco, California, under the unlawful agreement," etc., "and a great amount of exchange was sold upon banks and other places in Alaska, and upon banks in Seattle, San Francisco, Chicago, and New York,

and in foreign countries." That for the purpose of insuring the good faith of the parties to carry out such agreement, each party deposited a certified check for $5,000 as a penalty to be forfeited by any one of the parties violating said agreement. That on the first of May, 1909, the Nevada Company, and the directors, officers and stockholders of the Washington Company, defendants herein, "suspected that the First National Bank of Fairbanks was secretly varying from said stipulated rates set forth in said unlawful agreement, and [45] to prevent such variation therefrom and to carry out and effectuate the purpose of said unlawful agreement, combination and conspiracy * * * did pretend, on or about the 7th of May, 1909, to purchase all of the capital stock of the said First National Bank of Fairbanks, and pretended that each of the said corporations had purchased one-half thereof; and * * * did unlawfully pay out of the funds of said Washington Company, for one-half of the capital stock of the First National Bank of Fairbanks, the sum of $62,500, and the Nevada Company did pay for the remaining one-half of the capital stock of the First National Bank of Fairbanks, the sum of $62,500," and thereafter the officers and directors of said companies controlled the business affairs and conduct of said First National Bank unlawfully, "that is to say, that having obtained the absolute control of said corporation, they, in pursuance of the combination and conspiracy hereinbefore mentioned, compelled it and its board of directors and officers to enter into an agreement," in writing, which is set out, and in which

certain fixed rates are stipulated to be charged, which agreement is signed by the Washington-Alaska Bank, Fairbanks Banking Company, and the First National Bank, and in attached memoranda certain places were designated as depositories of the said banking companies. It is alleged that on the 10th of May, 1909, the directors, stockholders and officers of the Washington Company and the Nevada Company, each controlling one-half of the stock of the First National Bank of Fairbanks, did, secretly and in pursuance of the conspiracy set out, further conspire together and entered into an illegal agreement, which is set out, in which certain rates for services are fixed. It is then alleged that while the officers of the Washington Company, the defendants herein, and the Nevada Company were conducting and carrying on a banking business pursuant to such unlawful combination and [46] conspiracy, "they, on or about the 13th day of September, 1909, agreed together, in order to effect the absolute concentration and to obtain the absolute control of the banking business of the town of Fairbanks, the Tanana Valley and the country adjacent thereto" that the stockholders and directors of the said Washington Company should sell to the Nevada Company all of the capital stock and all of the assets of the Washington Company, and that said Nevada Company should purchase from the stockholders and directors of the said Washington Company all said capital stock and assets, and that such officers should deliver to the Nevada Company all moneys, properties and assets of the Washington Company, together with one-half of the cap-

ital stock of the First National Bank of Fairbanks, and in pursuance of such arrangement a resolution was passed by the Board of Directors of the Nevada Company, purchasing the capital stock of the Washington Company for $250,000. That the defendants, Parsons, Joslin, Schram, Webster, Clise, Barbour, and the Washington Securities Company did sell, transfer, and assign to the Nevada Company all their shares of stock, being all of the stock of the Washington Company, and received therefor $250,000, and "in pursuance of said unlawful agreement, combination and conspiracy in restraint of trade and commerce," the said defendants entered into an agreement not to engage in the banking business in the City of Fairbanks or adjacent creeks in the Territory of Alaska, for the period of five years. It is then alleged that on the 16th day of September, 1909, and for a long time prior thereto, the Nevada Company was insolvent, and that the money paid to the defendants was paid "out of the moneys and funds of the depositors and creditors of the said Nevada Company, all of which the defendants herein, and each of them, then and there well knew. It is then alleged that the Washington Company was solvent, and "That though its [47] capital stock did not possess a value in excess of the sum of $110,000, yet there was at said time sufficient assets to pay, liquidate or satisfy in full all of the demands of its depositors and creditors; that the difference of $140,000 between the true value of the capital stock of said Washington Company and $250,000 paid therefor was declared by the defendants to be a bonus, but in truth and in

fact was an advance of the future unlawful profits, and the share of the defendants therein to be made by the Nevada Company, for the benefit of all parties to said agreement, out of the unlawful agreement and combination in restraint of trade and commerce." That the directors of the Washington Company surrendered control of the company to the Nevada Company, who assumed control and management thereof, and that the Nevada Company and the Washington Company "falsely and fraudulently pretended to consolidate the said Nevada Company with the said Washington Company, and then and there caused the physical commingling of the movable property, effects and assets of the said two banks, and the occupation of the same office by the said two banks, and the conduct of the business of the said two banks at all times thereafter as the business, apparently, of one consolidated or merged corporation." "That the said Nevada Company, on or about the 8th day of October, 1910, to the knowledge and with the consent of the defendants herein, changed its name to the Washington-Alaska Bank, for the purpose of deceiving the depositors and creditors of the said Washington Company and the public generally," and it is alleged that the belief was general among the public and the creditors that there had been a lawful consolidation of said banks, and that none of the assets of the Nevada Company or of the Washington Company had been withdrawn. It is further alleged that on the 4th day of January, 1911, the Nevada Company closed its doors, and thereafter, in due and legal course, the plaintiff was appointed receiver, and

in the course of administration [48] paid to the creditors of the Washington Company and the Nevada Company, a dividend of fifty per cent. That in March, 1915, plaintiff receiver was advised that the laws of Nevada did not permit the Nevada Company to purchase the stock of the Washington Company, and that the receiver did not have lawful possession of the assets of the Washington Company, and "That in May, 1915, as a result of the information, and advice so received by said receiver and the depositors and creditors of said Washington Company, one of the creditors * * * suing for himself and all other creditors of said Washington Company, commenced a suit * * * against the Washington Company, and against said F. G. Noyes, as receiver of the said Nevada Company, who was then and there in possession of the assets and books of account of the Washington Company, * * *" and "that thereafter the said District Court for the Territory of Alaska, Fourth Judicial District * * * made an order appointing the said F. G. Noyes * * * the Receiver of said Washington Company and of all of its assets in Alaska * * *," and "that on the 8th day of September, 1915, in an action pending in the Superior Court of the State of Washington in and for King County * * * the said F. G. Noyes * * * was * * * duly appointed receiver of said corporation and authorized to take the assets of said corporation within the State of Washington, and to proceed to collect, demand and enforce any and all choses in action in favor of said corporation existing within the State of Washington." It

is alleged that an accounting was made by the receiver between the Nevada corporation and the Washington corporation, and there is due to the depositors of the Washington corporation the sum of $512,557.17. It is alleged "that at no time prior to March, 1915, did any creditors, depositors or other persons interested in the administration of the assets of said Washington Company have any notice or knowledge of the existence of said combination and conspiracy to restrain trade and commerce as aforesaid, [49] or any notice or knowledge that said representations and statements and said pretended consolidation were false and fraudulent, except the defendants herein and the said Nevada Company; that in March, 1915, and not prior thereto, said Noyes was advised by counsel residing and practicing in San Francisco, California, that the laws of Nevada did not either then or at the time of said pretended purchase, and sale of the stock of said Washington Company, and of the alleged consolidation, permit of the sale and purchase by a banking corporation organized under the laws of the State of Nevada of the stock of a banking corporation or of the consolidation of a corporation organized under the laws of the State of Nevada with a corporation under the laws of any other State or Territory or country; that the said receiver and the creditors and depositors of the said Washington Company were then and there for the first time advised by said counsel that the receivers * * * were not receivers of said Washington Company and its assets in Alaska, and that in consequence no receiver had been lawfully appointed

by said Washington Company."

The defendants have demurred to the complaint, among other grounds, for the reason that the complaint does not state facts sufficient to state a cause of action, and that the action was not commenced within the time limited by law. It is contended on the part of the defendants, first, that if the contracts are legal, a cause of action is not stated, because they do not violate the Sherman Anti-Trust Act, and second, if they are illegal, the action cannot be maintained, because the receiver has no greater power than the corporation for whom he acts, and since the bank was a party, it is estopped to claim damages for its wrongdoing.

The plaintiff contends that the corporation is not a party to the suit, and that the real offender is not the corporation, but these defendants. That the defendants' ingenuity [50] conceived the plan and they had the power to execute it, and contend that the act, so far as the corporation is concerned, was *ultra vires,* and beyond the scope and power of the trustee's appointment, and that the defendants cannot be permitted to say that their acts were illegal and beyond their power and yet that the corporation is guilty, and it is sought to draw a distinction between the whole body of the stockholders of the corporation and the corporation itself, so as to place the guilt, if any, upon the stockholders, and still leave the corporate entity guiltless.

The natural tendency of the acts set out show, I think, conclusively, that the acts were corporate acts. All of the agreements and everything done under

them purport to be and were corporate acts. The only act complained of that is not a corporate act is the sale of the shares of stock by the defendants in the Washington corporation. This, it is alleged, was for the purpose of carrying out the unlawful agreement to which the corporation was a party. This, it would seem, was but a part of the scheme. It seems to me, under the allegations and the conduct of all of the parties with relation to the scheme set out, the thought must be kept in mind as stated by the Supreme Court of Ohio, in State ex rel. Watson vs. Standard Oil Co., 30 N. E. 279, "That the metaphysical entity has no thought or will of its own; that every act ascribed to it emanates from and is the act of the individuals personated by it; and that it can no more do an act, or refrain from doing it, contrary to the will of these natural persons, than a house could be said to act independently of the will of its owner; and, where an act is ascribed to it, it must be understood to be the act of the persons associated as a corporation, and, whether done in their capacity as corporators or as individuals, must be determined by the nature and tendency of the act." Applying this test to the conduct of the parties [51] as set out, it nowhere appears that there was any act which has the earmark of individuality or individual relation, but all of the acts on their face conclusively appear to be the corporate acts, and with that purpose in view. The same Court further said:

> "The idea that a corporation may be a separate entity in the sense that it can act independently of the natural persons composing it, *or*

abstain from acting where it is their will that it shall, has no foundation in reason or authority, is contrary to the fact, and to base an argument upon it, when the question is as to whether a certain act was the act of the corporation or of the stockholders, cannot be decisive of the question, and is therefore illogical." (Italics ours.)

A similar issue was presented in the case of People of New York vs. North River Sugar Refining Company, 9 L. R. A. 33, in which the Court, upon the attempt to differentiate between the corporate entity and the stockholders, said:

"The reasoning leading to that result is so severely technical as to have suggested a justification almost reminding one of an apology. We are called upon to sever the corporation, the abstract legal entity, from the living and acting corporators; as it were, to separate in our thought the soul from the body, and admitting the sins of the latter, to adjudge that the former remains pure."

Again:

"The stockholders, by a unanimous vote, decided to go into the proposed combination, and authorized their committee to agree upon the terms. A trust of personal property may be created by parol. That the committee acted, that they contracted for their company upon the terms of the deed, is an inevitable inference from the action of the secretary, who swears that he signed by authority, and could have had none except upon the agreement of the committee.

It was therefore actually made, and the official signature was but the evidence of the agreement entered into by them. Here was a deliberate corporate act, if stockholders and trustees united can ever perform one, attested by one of the two officers who were authorized to sign. At that moment the defendant company had become a party to the contract by the consent of everybody connected with the corporation, and by force of the agreement to that effect which the signature of the secretary shows had been made by the authorized agency."

And again:

"If these things had been done lawfully, they would have been accomplished by the united action of the trustees and corporators, and beyond any [52] question would have been corporate acts. Having been done unlawfully, but by the same united agency aiming at similar results, they must still constitute corporate conduct, unless the bare fact of their illegality takes away their corporate character. *To say that would disarm the State in every case of misuse or abuse of chartered powers.*" (Italics ours.)

And the Court held that the claim that the acts complained of were corporate acts "could not be defeated by the assumed innocence of a convenient fiction." What has here been said, I think, is fully sustained by the Court of Appeals of this Circuit, in Linn & Lane Timber Co. vs. U. S., 196 Fed. 593.

The doctrine of *ultra vires* does not shield a corporation from the effects of its wrongful or tortious

conduct. First National Bank vs. Graham, 100 U. S. 699; Salt Lake City vs. Hollister, 118 U. S. 256.

Has the receiver a right of action where the corporation would have none? Does the appointment of a receiver of a corporation enlarge the scope and benefits which might accrue to the corporation by reason of an action on the part of the receiver? I think it is fundamental that the receiver simply stands in the place and acts instead of and for the corporation. The powers of the corporation are not extended; the rights of the corporation by reason of the appointment are not enlarged. The action by the receiver, while it would inure indirectly to the benefit of creditors if recovery was had, primarily is not an action for the creditors. The receiver does not represent the creditors other than as an arm of the court to receive assets of the corporation and convert them into funds, and disburse them under the order of the Court to the persons who are entitled thereto. There is no allegation in the complaint which in any way connects the creditor and the receiver in any other or different relation. All the stockholders of this corporation, it is alleged, joined the combination. The receiver, then, represents no person who is directly interested who is not a party to the unlawful combination, and [53] as such party to an illegal combination, cannot sue under the Sherman Act for damages which he has suffered. Bishop vs. American Preserving Co., 105 Fed. 845, in which it was said:

> "There is another ground that might well be considered as placing the plaintiff without the

purview of said act, to wit, the fact that the plaintiff was himself a party to the unlawful combination and was injured by reason of his illegal connection therewith."

It may be said that the creditor was damaged by reason of the act of the defendants, in that the defendants were paid $250,000 from the depositors' money, knowing it to be the depositors' money. It is true that if the defendants had taken $250,000 of the depositors' money in the Washington Company bank, of which they were directors, and depleted the assets to that extent, that the depositors, if injured by reason thereof, would have a right of recovery; but that is not this case. The action is not for that purpose, and the complaint specifically alleges that the money was paid from the depositors' money of the Nevada Company, and this was known to the defendants. Hence the depositors of the Washington Company, of which the defendants were directors and stockholders, were not injured by this payment.

Many authorities are cited to the effect that the principle *in pari delicto* will not prevent a recovery, but I do not think the cases have application here. Courts will not deny relief to a guilty party if to refuse to do so will result in the accomplishment of the illegal act. But upon the alleged facts in the case at bar, the principle has no application. Nor will the Court lend its aid "because the interest of the public will be best served by punishing those defendants, who alone received the benefits of the transaction," at the instigation of a private suitor, unless upon presentment by a grand jury. The punish-

ment is prescribed by the act, and parties [54] who are damaged have the right to invoke the provisions of the act, and it is only to such parties that a Court can afford relief. City of Atlanta vs. Chattanooga Foundry & Pipe Works, 203 U. S. 390.

In this connection I think it may be stated that while an offense may be charged against the Sherman Act, it does not appear that the Washington Company, of which plaintiff is receiver, was discriminated against and damaged because of the conspiracy. It would appear that the purpose of the conspiracy was against the public and not against either of the corporations, or against any depositor. The object was not to lessen the value of the depositors' security, but rather to enhance it by increasing the earning capacity of the bank, as clearly and fully appears by the allegations of the complaint. The stock of all of the alleged conspirators was placed in the same relation and not in antagonism to any creditor, and the business was operated with a view of enhancing the earnings, and the Washington Company was not depressed nor discriminated against, but was given the business consideration of the conspiring bank which acquired the stock. It does not appear that the failure of the banks, or either of them, was caused by the conspiracy, but rather, in spite of it. I see no application of Shawnee Compress Co. vs. Anderson, 209 U. S. 423, nor parallel in Darius Cole Transportation Co. vs. White Star Line, 186 Fed. 63 (225 U. S. 704).

I do not believe that the complaint states a cause of action; nor do I think this action was commenced

within the time limited by law. The statute of limitations of Washington is applicable to this case, Chattanooga Foundry & Pipe Works vs. City of Atlanta, *supra;* Harvey vs. Booth Fisheries Co., 228 Fed. 782. I think this case comes within subdivision 6 of Section 159, Remington & Ballinger's Statutes of Washington, which provides that, "An action upon a statute for a penalty or [55] forfeiture, where an action is given to the party aggrieved, or to such party and the State * * * ," shall be commenced within three years. This is clearly an action for a penalty. The plaintiff contends that the liability is created by reason of the written agreements entered into, and therefore the six year statute should obtain. The written agreements are but links in the chain of evidence to establish the wrong upon which the right of recovery is predicated. The recovery is not based upon the written agreements, but upon the statute which gives the right of action. In Caldwell vs. Hurley, 41 Wash. 296, the action arose directly out of a written obligation which the party had signed, and in which he obligated himself to pay certain sums of money, and the Court held that "the liability for contribution of appellant and respondent is an implied liability which arose by reason of their becoming cosureties on the note." If they had not entered into the written contract which resulted from their signing the note, at the time, under the circumstances, and for the purpose found by the Court, there would have been no liability. The liability was contractual in its nature, and the direct result of that written agreement by

which respondent was compelled to make the payment for which contribution was sought. In the instant case the only instrument set out in the complaint which was signed by the defendants was the agreement not to engage in the banking business in Fairbanks for five years, of itself not against the policy of the law, and not an obligation which has been violated, nor upon which recovery is predicated. Chattanooga Foundry & Pipe Works vs. Atlanta, 203 U. S. 390, does not hold to a different conclusion. The voluminous cases cited have no application to the facts stated in the bill. (*1)

All of the transactions charged in the complaint having transpired more than three years prior to the commencement of the action, all causes of action, if any, accrued at the time [56] of the appointment of the receiver. Scott vs. Armstrong, 146 U. S. 499. All of the assets were then in the hands of the Court and being administered, and all facts open to the plaintiff. The fact that a receiver was appointed does not change the status. Hawkins v. Donnerberg (Oregon), 66 Pac. 691; Bennett vs. Thorne, 36 Wash.

(*1) Smith vs. Seattle, 18 Wash. 484. Sterrett vs. Northport Mining & Smelting Co., 30 Wash. 164. Brisky vs. Leavenworth, 68 Wash. 386. St. Louis & S. F. Ry. Co. vs. Ramsey, 132 Pac. 478. Georgia Ry. & Elec. Co. vs. Tompkins, 75 S. E. 664. Houston vs. Thorton, 65 Am. St. 699. N. State Bank vs. Bremerton, 86 Wash. 261. Handly Inv. Co. vs. Trenholm, 48 Wash. Dec. 537. Dodd v. Pittsburg, 106 S. W. 787.

253; Chilberg vs. Biebenbaum, 41 Wash. 663; and the fact that creditors may not have had knowledge is immaterial. Williams et al. vs. Commercial National Bank, 11 L. R. A. (N. S.) 857.

It is contended by the plaintiff in avoidance of the bar of the statute, that he has set out facts sufficient to avoid the bar (Stearns vs. Hochbrun, 24 Wash. 206), and that without further allegations the matter should be left rather a rule of evidence than a rule of pleading, "if it still be the rule that means of discovery is equivalent to actual discovery." In Dettering vs. Roeder, filed June 29, 1914, this Court stated:

> "The party seeking to avoid the bar of the statute, however, may not do so by general allegations of ignorance on his part, and the rule of pleading is thus laid down in Wood vs. Carpenter, 101 U. S. 135, 141, 'In this class of cases the plaintiff is held to stringent rules of pleading, and especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentations was discovered, and what the discovery is, so that the Court may clearly see whether by ordinary diligence the discovery might not have been made.' Stearns vs. Page, 7 How. 819, 829. (Continuing.)
>
> "A general allegation of ignorance at one time and knowledge at another are of no effect. If the plaintiff made any particular discovery, it should be stated when it was made, what it

was, and how it was made, and why it was not made sooner."

Hardt vs. Heiweyer, 152 U. S. 547; Godden vs. Kimmell, 99 U. S. 201; Lansdale v. Smith, 106 U. S. 391; Hammond vs. Hopkins, 143 U. S. 224. The allegations of the complaint to avoid the bar are not the want of knowledge of the facts, but rather want of legal information upon the facts. This is not sufficient. The most favorable statement of the rule for those seeking to [57] avoid the bar of the statute is that stated in Bailey vs. Glover, 21 Wall. 342, in which the Court, at page 347, said that "where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered." But in the instant case the facts were known and there is no allegation of concealment. In fact, the complaint sets out the transactions at hand, all of which appear to have been in the possession of the plaintiff more than three years prior to the commencement of this action, but seeks to toll the statute because he was not advised of the legal status of the known facts.

The demurrer is sustained.

JEREMIAH NETERER,
Judge.

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. June 27, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [58]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
Plaintiff,

vs.

W. H. PARSONS, and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,
Defendants.

Order Sustaining Demurrer.

This cause having come on to be heard, on the 4th day of May, 1916, upon the demurrer of the defendants above named to the complaint heretofore filed herein, and the Court having listened to the arguments of counsel for the respective parties, and being fully advised in the premises:

IT IS, THEREFORE, CONSIDERED and ORDERED that said demurrer be and the same is hereby sustained; to which counsel for plaintiff herein duly excepts.

Dated Seattle, Washington, July 17, 1916.

JEREMIAH NETERER,

Judge.

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. July 17, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [59]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,

Plaintiff,

vs.

W. H. PARSONS, and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,

Defendants.

Judgment.

In this cause the Court having on the 17th day of July, 1916, upon due hearing thereof, duly entered

its order sustaining the demurrer of the defendants above named to the complaint heretofore filed herein, and said plaintiff now appearing in open court, by his attorneys, de Journel & de Journel, Roy V. Nye and Hughes, McMicken, Dovell & Ramsey, and refusing to plead further herein;

Now, upon motion of said defendants, it is by the Court hereby ORDERED, ADJUDGED and DECREED that the complaint of said plaintiff herein be and the same is hereby dismissed, and that said defendants have and recover of and from said plaintiff the costs of said defendants herein; taxed in the sum of thirteen and 70/100 dollars. [60]

To all of which plaintiff, by his attorneys, duly excepts.

Done in open court this 17 day of July, 1916.

JEREMIAH NETERER,
Judge.

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. July 17, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [61]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
Plaintiff,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,
Defendants.

Assignment of Errors.

The above-named plaintiff, in connection with and as a part of his petition for a writ of error filed herein, makes the following assignment of errors, which he avers were committed by the Court in the rendition of the judgment against this plaintiff, appearing upon the record herein:

I.

The Court erred in holding and deciding that the complaint of the plaintiff did not state facts suffi-

cient to constitute a cause of action against the above-named defendants. [62]

II.

The Court erred in holding that the above-entitled action was not commenced within the time limited by law.

III.

The Court erred in sustaining the demurrer of the defendants to the complaint of the plaintiff.

IV.

The Court erred in not overruling the demurrer of the defendants to the complaint of the plaintiff.

V.

The Court erred in rendering judgment against this plaintiff upon the sustaining of the demurrer of defendants.

WHEREFORE, plaintiff prays that the judgment of the Honorable District Court of the United States for the Western District of Washington, Northern Division, be reversed, and that such directions be given that full relief may inure to plaintiff by virtue of his writ of error.

de JOURNEL & de JOURNEL,
ROY V. NYE,
HUGHES, McMICKEN, DOVELL & RAMSEY,
Attorneys for Plaintiff. [63]

Copy of within Assignment of Errors received, and due service of same acknowledged this 31st day of July, 1916.

CLISE & POE,
PETERS & POWELL,
Attys. for Defendants.

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. July 31, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [64]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
Plaintiff,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,
Defendants.

Petition for Writ of Error.

Now comes the above-named plaintiff and says that on or about the 17th day of July, 1916, this Court entered judgment herein in favor of the defendants and against this plaintiff, in which judgment and the proceedings had prior thereunto in this cause certain

errors were committed, to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, this plaintiff prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of [65] Appeals; and further prays that an order be made fixing the amount of security which the said petitioner shall give upon said writ of error.

Dated July 31st, 1916.

de JOURNEL & de JOURNEL,
ROY V. NYE,
HUGHES, McMICKEN, DOVELL & RAMSEY,
Attorneys for Plaintiff.

Copy of within petition for order allowing writ of error received and due service of same acknowledged this 31st day of July, 1916.

PETERS & POWELL,
CLISE & POE,
Attorneys for Defendants.

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. July 31, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [66]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
Plaintiff,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,
Defendants.

Order Allowing Writ of Error.

This 31st day of July, 1916, came the plaintiff by his attorneys, and filed herein and presented to the Court his petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may

be proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the plaintiff giving bond according to law, in the sum of Two Hundred ($200.00) Dollars.

JEREMIAH NETERER,
Judge. [67]

Copy of this order granting writ of error and fixing amount of bond received and due service of same acknowledged this 31st day of July, 1916.

CLISE & POE,
PETERS & POWELL,
Attorneys for Defendants.

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. July 31, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [68]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
Plaintiff,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L.

WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,

Defendants.

Cost Bond.

KNOW ALL MEN BY THESE PRESENTS: That we, F. G. Noyes, as receiver of the Washington-Alaska Bank, a corporation organized under the laws of the State of Washington, the above-named plaintiff, as principal, and United States Fidelity and Guaranty Company, a body corporate, duly incorporated under the laws of the State of Maryland and authorized to transact the business of surety in the State of Washington, as surety, executing this bond in behalf of said principal, are, jointly and severally, held and firmly bound unto W. H. Parsons and Jane Doe Parsons, his wife, Falcon Joslin and Jane Doe Joslin, his wife, John Schram and Jane Doe Schram, his wife, E. L. Webster and Jane Doe Webster, his wife, J. W. Clise and Jane Doe Clise, his wife, F. E. Barbour [69] and Jane Doe Barbour, his wife, and Washington Securities Company, a corporation, the defendants above-named, their heirs, executors, administrators, successors and assigns, in the just and full sum of Two Hundred ($200) Dollars, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 31st day of July, A. D. 1916.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS, in the above-entitled action a judgment was entered on the 17th day of July, A. D. 1916, dismissing the said action and awarding costs, and

WHEREAS, the said plaintiff has obtained from said Court a writ of error to reverse the said judgment in said action, and a citation directed to the defendants, and each of them, is about to be issued, citing and admonishing them, and each of them, to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at San Francisco, in the State of California;

NOW, THEREFORE, if the said plaintiff shall prosecute the said writ of error to effect and shall answer all costs that may be awarded against him if he shall fail to make good his plea, then the above obligation to be void, otherwise to remain in full force and effect.

[Seal] F. G. NOYES,
As Receiver of Washington-Alaska Bank.
By HUGHES, McMICKEN, DOVELL & RAMSEY,
His Attorneys.

UNITED STATES FIDELITY AND GUARANTY COMPANY,
By GROVER C. WINN,
Its Attorney in Fact. [70]

Sufficiency of the surety on the foregoing bond approved by me this 31st day of July, A. D. 1916.

JEREMIAH NETERER,
Judge of said Court.

Copy of within cost bond received and due service of same acknowledged this 31st day of July, 1916.

CLISE & POE,
PETERS & POWELL,
Attorneys for Defendants.

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. July 31, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [71]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
Plaintiff,

vs.

W. H. PARSONS et al.,
Defendants.

Stipulation as to Record.

IT IS HEREBY STIPULATED between the parties hereto that the Clerk of this Court in making up his return to the writ of error herein shall include therein the following:

Complaint;
Demurrer to Complaint;
Opinion of Court;
Order Sustaining Demurrer;
Judgment of Dismissal;
Assignment of Errors;
Petition for Order Allowing Writ of Error;
Order Granting Writ of Error and Fixing Amount of Bond;
Cost Bond;
Writ of Error; and Copy of Writ of Error Lodged with Clerk for Defendant in Error;
Original Citation and Acceptance of Service Thereof;
Copy of Citation Lodged With Clerk for Defendant in Error;
Stipulation as to Record;

which comprise all the papers, exhibits, depositions and other proceedings which are necessary to the hearing of said cause upon such writ of error in the United States Circuit Court of Appeals, and that no other papers or proceedings than those above mentioned need be included by the Clerk of said Court in making up his return to [72] said writ of error as a part of such record.

Dated August 1st, 1916.

de JOURNEL & de JOURNEL,
ROY V. NYE,
HUGHES, McMICKEN, DOVELL & RAMSEY,
Attorneys for Plaintiff.

CLISE & POE,
PETERS & POWELL,
Attorneys for Defendants.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this Court.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Attorneys for Plaintiff in Error.

[Endorsed]: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Aug. 1, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [73]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
Plaintiff in Error,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,
Defendants in Error.

Copy of Writ of Error (Lodged).

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States to the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you, or some of you, between F. G. Noyes, as Receiver of the Washington-Alaska Bank, a corporation organized under the laws of the State of Washington, [74] Plaintiff, and W. H. Parsons and Jane Doe Parsons, his wife, Falcon Joslin and Jane Doe Joslin, his wife, John Schram and Jane Doe Schram, his wife, E. L. Webster and Jane Doe Webster, his wife, J. W. Clise and Jane Doe Clise, his wife, F. E. Barbour and Jane Doe Barbour, his wife, and Washington Securities Company, a corporation, Defendants, a manifest error hath happened, to the great damage of the said F. G. Noyes, as receiver of the Washington-Alaska Bank, a corporation, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of

Appeals for the Ninth Circuit, at the courtrooms of said Court in the City of San Francisco, in the State of California, together with this writ, so that you have the same at the said place, in said circuit, on the 28th day of August, next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein, to correct that error what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 31st day of July, A. D. 1916, and in the 141st year of the independence of the United States of America.

FRANK L. CROSBY,
Clerk of said District Court of the United States for the Western District of Washington. [75]

The foregoing writ is hereby allowed.

JEREMIAH NETERER,
United States District Judge for the Western District of Washington. [76]

Received copy of the foregoing writ of error, lodged with me for defendants in error, this 31st day of July, 1916.

FRANK L. CROSBY,
Clerk of the United States District Court for the Western District of Washington.

Copy of within writ of error received and due service of same acknowledged this 31st day of July, 1916.

CLISE & POE,
PETERS & POWELL,
Attorneys for Defendants in Error.

[Endorsed]: No. 3223. Lodged copy. Filed in the U. S. District Court, Western District of Washington, Northern Division. Jul. 31, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [77]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
Plaintiff in Error,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,
Defendants in Error.

Copy of Citation (Lodged).

United States of America,
Ninth Judicial Circuit,—ss.

To W. H. Parsons and Jane Doe Joslin, His Wife, Falcon Joslin and Jane Doe Joslin, His Wife, John Schram and Jane Doe Schram, His Wife, E. L. Webster and Jane Doe Webster, His Wife, J. W. Clise and Jane Doe Clise, His Wife, F. E. Barbour and Jane Doe Barbour, His Wife, and Washington Securities Company, a Corporation, Defendants:

You and each of you are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, State of California, in said circuit, on the 28th day of August, 1916, pursuant to a writ of error filed in the Clerk's office of the District [78] Court of the United States for the Western District of Washington, Northern Division, wherein said F. G. Noyes, as Receiver of the Washington-Alaska Bank, a corporation organized under the laws of the State of Washington, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Dated this 31st day of July, 1916.

JEREMIAH NETERER,

United States District Judge for the Western District of Washington.

FRANK L. CROSBY,

Clerk of said United States District Court for the Western District of Washington.

Copy of within citation received and due service of same acknowledged this 31st day of July, 1916.

CLISE & POE,

PETERS & POWELL,

Attorneys for Defendants in Error. [79]

[Endorsed]: No. 3223. Lodged Copy. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 31, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [80]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,

Plaintiff,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L.

WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record, etc.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify the foregoing typewritten pages, numbered from 1 to 82, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause on Writ of Error therein, in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to said Writ of Error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit. [81]

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf

of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828, R. S. U. S.) for making typewritten record, certificate or return, 225 folios at 15c	33.75
Certificate of Clerk to transcript of record, 4 folios at 15c	.60
Seal to said Certificate	.20
	$34.55

I hereby certify that the above cost for preparing and certifying said record, amounting to $34.55, has been paid me by Messrs. Hughes, McMicken, Dovell & Ramsey, Attorneys for Plaintiff in Error.

I further certify that I hereby attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, this 3d day of August, 1916.

[Seal] FRANK L. CROSBY,
Clerk U. S. District Court. [82]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
Plaintiff in Error,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,
Defendants in Error.

Writ of Error.

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States to the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you, or some of you,

between F. G. Noyes, as Receiver of the Washington-Alaska Bank, a corporation organized under the laws of the State of Washington, [83] plaintiff, and W. H. Parsons and Jane Doe Parsons, his wife, Falcon Joslin and Jane Doe Joslin, his wife, John Schram and Jane Doe Schram, his wife, E. L. Webster and Jane Doe Webster, his wife, J. W. Clise and Jane Doe Clise, his wife, F. E. Barbour, and Jane Doe Barbour, his wife, and Washington Securities Company, a corporation, defendants, a manifest error hath happened, to the great damage of the said F. G. Noyes, as Receiver of the Washington-Alaska Bank, a corporation, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at the courtrooms of said Court in the City of San Francisco, in the State of California, together with this writ, so that you have the same at the said place, in said circuit, on the 28th day of August next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD DOUG-

LASS WHITE, Chief Justice of the United States, this 31st day of July, A. D. 1916, and in the 141st year of the independence of the United States of America.

FRANK L. CROSBY,
Clerk of said District Court of the United States for the Western District of Washington. [84]

The foregoing writ is hereby allowed.

JEREMIAH NETERER,
United States District Judge for the Western District of Washington. [85]

Received copy of the foregoing writ of error, lodged with me for defendants in error, this 31st day of July, 1916.

FRANK L. CROSBY,
Clerk of the United States District Court for the Western District of Washington.

Copy of within writ of error received and due service of same acknowledged this 31 day of July, 1916.

CLISE & POE,
PETERS & POWELL,
Attorneys for Defendants in Error. [86]

[Endorsed]: Original. No. 2838. In the United States Circuit Court of Appeals for the Ninth Circuit. F. G. Noyes, as Receiver of the Washington-Alaska Bank, a Corporation Organized Under the Laws of the State of Washington, Plaintiff in Error, vs. W. H. Parsons et ux., et al., Defendants in Error. Writ of Error. Filed Aug. 7, 1916. F. D. Monckton, Clerk. [87]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3223.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation Organized Under the Laws of the State of Washington,
Plaintiff in Error,

vs.

W. H. PARSONS and JANE DOE PARSONS, His Wife, FALCON JOSLIN and JANE DOE JOSLIN, His Wife, JOHN SCHRAM and JANE DOE SCHRAM, His Wife, E. L. WEBSTER and JANE DOE WEBSTER, His Wife, J. W. CLISE and JANE DOE CLISE, His Wife, F. E. BARBOUR and JANE DOE BARBOUR, His Wife, and WASHINGTON SECURITIES COMPANY, a Corporation,
Defendants in Error.

Citation on Writ of Error.

United States of America,
Ninth Judicial Circuit,—ss.

To W. H. Parsons and Jane Doe Parsons, His Wife, Falcon Joslin and Jane Doe Joslin, His Wife, John Schram and Jane Doe Schram, His Wife, E. L. Webster and Jane Doe Webster, His Wife, J. W. Clise and Jane Doe Clise, His Wife, F. E. Barbour and Jane Doe Barbour, His Wife, and Washington Securities Company, a Corporation, Defendants;

You and each of you are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, State of California, in said circuit, on the 28th day of August, 1916, pursuant to a writ of error filed in the Clerk's office of the District [88] Court of the United States for the Western District of Washington, Northern Division, wherein said F. G. Noyes, as Receiver of the Washington-Alaska Bank, a corporation organized under the laws of the State of Washington, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Dated this 31 day of July, 1916.

JEREMIAH NETERER,
United States District Judge for the Western District of Washington.

FRANK L. CROSBY,
Clerk of Said United States District Court for the Western District of Washington.

Copy of within citation received and due service of same acknowledged this 31st day of July, 1916.

CLISE & POE,
PETERS & POWELL,
Attorneys for Defendants in Error. [89]

[Endorsed]: Original. No. 2838. In the United States Circuit Court of Appeals for the Ninth Cir-

cuit. F. G. Noyes, as Receiver of the Washington-Alaska Bank, a Corporation Organized Under the Laws of the State of Washington, Plaintiff in Error, vs. W. H. Parsons et ux., et al., Defendants in Error. Citation. Filed Aug. 7, 1916. F. D. Monckton, Clerk. **[90]**

[Endorsed]: No. 2838. United States Circuit Court of Appeals for the Ninth Circuit. F. G. Noyes, as Receiver of the Washington-Alaska Bank, a Corporation Organized Under the Laws of State of Washington, Plaintiff in Error, vs. W. H. Parsons and Jane Doe Parsons, His Wife, Falcon Joslin and Jane Doe Joslin, His Wife, John Schram and Jane Doe Schram, His Wife, E. L. Webster and Jane Doe Webster, His Wife, J. W. Clise and Jane Doe Clise, His Wife, F. E. Barbour and Jane Doe Barbour, His Wife, and Washington Securities Company, a Corporation, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed August 7, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.